

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

**ORDER GRANTING MOTION FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT**

Plaintiff Joesph A. Worley alleges that the Indiana Bureau of Motor Vehicles has deprived him of his fundamental liberty interest in obtaining a state-issued photo identification card. Worley filed a complaint and an amended complaint [Docket Nos. 1, 22], both of which the BMV Commissioner moved to dismiss. [Docket Nos. 20, 23.]

Worley now seeks leave to file a second amended complaint to narrow the issues to whether he has a fundamental liberty interest in being issued a photo ID and to add a procedural due process claim. [Docket No. 27.] The Commissioner opposes further amendment and requests dismissal of Worley's amended complaint. [Docket No. 28.]

Federal Rule of Civil Procedure 15(a)(2) provides that when a party can no longer amend as a matter of course, it may amend its pleading “only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” The rule reflects a liberal view toward amendments, but “courts in their sound discretion may deny a

proposed amendment if the moving party has unduly delayed in filing the motion, if the opposing party would suffer undue prejudice, or if the pleading is futile.” *Soltys v. Costello*, 520 F.3d 737, 743 (7th Cir. 2008).

The Commissioner does not allege and the Court does not find either undue delay or undue prejudice. Instead, the Commissioner alleges that Worley’s proposed amendments are futile, reiterating the arguments raised in the Commissioner’s pending motion to dismiss. [Docket No. 23.] The motion to dismiss is the more appropriate device to address these arguments. Because Worley’s proposed amendments are timely and not prejudicial, the Court grants Worley’s motion for leave to file a second amended complaint. [Docket No. 27.] The second amended complaint [Docket No. 27-1] shall be deemed filed as of the date of this order.

The Court does not anticipate that these changes will affect the substance of the Commissioner’s motion to dismiss. However, if necessary based upon this amendment, the Commissioner may supplement its motion within 14 days.

Dated: 03/15/2011

7-13L

Tim A. Baker  
United States Magistrate Judge  
Southern District of Indiana

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